IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT #: 0027/09

REGINA

V.

RANDY LEBERT MARTIN

Appearances: **Mme. DPP Cheryll Richards Q.C. with Elisabeth Lees on behalf of the Crown**

Ms. Amelia Fosuhene of Brady & Co. on behalf of the Prisoner

Before: **Hon. Mr. Justice Charles Quin Q.C.**

Heard: **24th January 2018**

HEADNOTE

Criminal Law —Pursuant to the Conditional Release Law 2014 – Murder - s.14 – Aggravating and Extenuating circumstances –. *Schedule 12 of the Conditional Release Law Regulations - Minimum term.*

CONDITIONAL RELEASE JUDGMENT

1. On the 11th March 2009 Sabrina Schirn was murdered.

2. The Prisoner, Randy Martin, was charged with the murder on Indictment #27 of 2009 and pleaded not guilty.

3. The trial took place between the 25th November and the 11th December 2009 and between the 11th January and the 15th January 2010.

4. On the 26th January 2010 the Prisoner was found guilty of the murder of Sabrina Schirn and sentenced to life imprisonment.

5. The Prisoner appealed his conviction to the Cayman Islands Court of Appeal (CICA) and his appeal was dismissed on the 20th August 2010.

6. The Prisoner was born on the 14th August 1974. At the time of the trial the Prisoner was 36 years of age and he is now 43 years old.

THE LAW

7. Section 182 of the ***Penal Code 2017 Revision*** provides that "*Any person convicted of murder shall be sentenced to imprisonment for life*".

8. However, with the introduction of the ***Conditional Release Law (2014)*** (***the Law***) which came into effect on the 15th February 2016, it is now the law that when sentencing to a term of imprisonment for life, the Court shall specify the period of incarceration the prisoner shall serve before the prisoner becomes eligible to be considered for conditional release on licence.

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9. Section 14(1) further provides that for murder, the period of incarceration shall be thirty (30) years before the prisoner is eligible for conditional release, unless there are extenuating or aggravating circumstances, exceptional in nature, which may cause the court to impose a lower or a longer period of imprisonment.

10. The relevant section states:-

> *"14. (1) Notwithstanding any other Law to the contrary, when sentencing a prisoner to a term of imprisonment for life, the court shall specify the period of incarceration the prisoner shall serve before the prisoner is eligible to be considered for conditional release on licence, the period being such as the court considers appropriate to satisfy requirements of retribution, deterrence and rehabilitation, but for murder, the period shall be thirty years before the prisoner is eligible for conditional release unless there are -*
>
> *(a) extenuating circumstances, exceptional in nature, in which case the court may impose a lower period of incarceration; or*
>
> *(b) aggravating circumstances, exceptional in nature, in which case the court may impose a longer period of incarceration.*
>
> *(2) In making a decision under subsection (1)(a) or (b), the court shall state the extenuating circumstances or the aggravating circumstances, as the case may be."*

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11. Section 21 of the Law provides:

> *"The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law."*

12. In accordance with s.21 of the Law, on the 9th February 2016 the Cabinet enacted ***The Conditional Release of Prisoners Regulations 2016 (the Regulations)***.

13. Regulation 14 provides:

> *"For the purposes of determining the earliest possible conditional release date in relation to a prisoner on a term of imprisonment for life, the circumstances set out in Schedule 12 shall be considered."*

14. In the circumstances it is necessary to set out the first two paragraphs of Schedule 12 of the ***Regulations*** (the Schedule) in full as follows:

> *"**Introduction***
>
> *1. (1) Where a mandatory life sentence for murder is prescribed by any Law, for the purposes of section 14 of the Law the aggravating and extenuating circumstances are outlined in this schedule.*
> *(2) For offences other than murder, for the purposes of section 14 of the Law, the aggravating and extenuating circumstances may include all the relevant circumstances of the offence and or the offender.*
> *(3) For murder, the period shall be thirty years before the prisoner is eligible for conditional release unless there are extenuating or aggravating circumstances, exceptional in nature, in which case the court may impose a shorter or longer period of incarceration respectively;*
>
> ***Aggravating circumstances and extenuating circumstances***
>
> *2. (1) Detailed consideration of aggravating or mitigating circumstances may result in a minimum term of any length.*
> *(2) Aggravating circumstances that may be relevant to the offence of murder include –*
> *(a) a significant degree of planning or premeditation;*
> *(b) the fact that the victim was particularly vulnerable because of age or disability;*
> *(c) mental or physical suffering inflicted on the victim before death,*
> *(d) the abuse of a position of trust;*
> *(e) the use of duress or threats against another person to facilitate the commission of the offence;*
> *(f) the fact that the victim was providing a public service or performing a public duty;*
> *(g) concealment, destruction or dismemberment of the body;*
> *(h) previous convictions;*
> *(i) abduction and sexual or sadistic conduct; and*
> *(j) any other circumstances which may be considered relevant.*
> *(3) Extenuating circumstances that may be relevant to the offence of murder include –*
> *(a) an intention to cause serious bodily harm rather than to kill;*
> *(b) lack of premeditation;*
> *(c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 185(1) of the Penal Code (2013 Revision)), lowered the offender's degree of culpability;*
> *(d) the fact that the offender was provoked (for example, by prolonged stress);*
> *(e) the fact that the offender acted to any extent in self-defence or in fear of violence;*

(f) *a belief by the offender that the murder was an act of mercy;*
(g) *the age of the offender; and*
(h) *any other circumstances which may be considered relevant."*

15. Section 14(1) of ***the Law*** requires the court that sentences a person to imprisonment for life to fix a period of incarceration that satisfies the requirements of retribution, deterrence and rehabilitation. In the case of murder that period shall be 30 years – unless there are extenuating or aggravating circumstances exceptional in nature[1]. If there are such circumstances, the Court is permitted to fix a shorter or longer period.

16. In paragraph 1(1) of Schedule 12 to ***the Regulations*** it states that for a mandatory life sentence for murder, for the purposes of s.14 of the ***Law***, the aggravating and extenuating circumstances are outlined in the Schedule. However in paragraph 1(3) of the Schedule, the words "*exceptional in nature*" are again used to describe the extenuating or aggravating circumstances.

17. Accordingly, when the Prisoner was sentenced, our law did not provide for the setting of a minimum term of imprisonment, after which the Prisoner may apply for Conditional Release.

18. The ***Conditional Release Law 2014*** (the Law), which came into effect on the 15th February 2016, and the ***Conditional Release Regulations*** apply to all Prisoners, regardless of when they were convicted.

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[1] (my emphasis)

SUMMARY OF FACTS

19. A detailed Summary of Facts is contained in the case summary at tab 2 of the Crown's bundle. In brief, Sabrina Schirn was lured by the Defendant to the prison farm whilst he was a serving prisoner. Sabrina Schirn was brutally murdered. She received chop wounds and incised wounds to the head, which would cause her to lose consciousness. There were also such wounds to the scalp face and the back of the head. There would have been a serious loss of blood from these injuries and the deceased would have died in a matter of minutes and certainly less than one hour. There were incised wounds to the left shoulder and there were four multiple wounds – one of 19 centimeters on the upper back, which went through the muscle to the vertebrae.

20. There were also a number of defensive injuries. The Deceased's thumb was nearly amputated, the index finger of the right hand was amputated through the middle bone. There was a chop wound on the left side of the Deceased's forearm and to the left wrist and hand of 7.5 centimeters that went through the bones and almost amputated the left hand.

21. Sabrina Schirn was murdered on 11th March 2009. Her body was found on 17th March 2009 after the vehicle she had been driving was located hidden on a dirt track on 16th March 2009. The body was found in nearby a container near to a disused shed where blood was identified.

CROWN'S SUBMISSIONS

22. Mme. DPP submits:

i. There was a significant degree of planning and premeditation;

ii. The victim, Sabrina Schirn, endured significant mental and physical suffering before her death;

iii. The Prisoner attempted to conceal the body of the victim;

iv. The Prisoner has previous convictions.

23. The Crown submit that the physical and mental suffering of the victim before death was exceptional in nature. In addition, the concealment of the victim's body lead to the delay in the identification of the location of the deceased victim. The Crown also submit there was as significant degree of planning to enable the murder to take place whilst the Prisoner was a serving prisoner. And, finally, the prisoner's previous convictions must be taken as aggravating circumstances in this case.

DEFENCE SUBMISSIONS

24. *Pre-Planning*:

a. The Prisoner does not accept that there was a significant degree of planning or pre-meditation.

b. The Deceased was visiting the prison farm on a regular basis to see other prisoners, other than the Prisoner. The Deceased would bring ganja to the Prison.

25. *Luring the victim:*

a. The Prisoner does not accept that he lured the victim, Sabrina Schirn, to the prison farm

b. The Prisoner had no way of luring the victim to the prison farm.

c. Sabrina Schirn was a willing visitor.

26. *The Glove:*

a. The Defence submits that the fact that the Prisoner took another prisoner's gloves is not indicative of pre-planning or premeditation.

27. *The Machete*:

a. The Defence submits that the machete the Prisoner had in his hand was a work tool and does not inevitably lead to the inference of pre-planning and pre-mediation.

28. *In relation to the mental and physical suffering of the victim*:

a. The Prisoner relies on the pathologist's report which suggests that the victim, Sabrina Schirn, may have died as a result of a wound to her head and in a matter of minutes.

b. The time estimate provided by the pathologist suggests that Sabrina Schirn did die within a matter of minutes and within less than an hour.

c. The Prisoner submits that the Court should take into consideration the account most favourable to the Prisoner, and there is no evidence which suggests the victim's demise was prolonged.

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29. *Previous Convictions*:

a. It is accepted by the Prisoner's defence counsel that the Prisoner's previous convictions are relevant to this hearing.

30. *Extenuating Factor*:

a. The Prisoner's counsel submits that one extenuating factor is that it was not a pre-planned or pre-meditated offence. The murder happened on the spur of the moment and without any degree of planning.

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ANALYSIS

31. I refer to the Summary of Facts above.

32. When a life sentence is imposed for murder, the ***Conditional Release Law*** contains a clear expression of the intention of the Legislative Assembly; the minimum term shall be thirty (30) years, unless there are "extenuating" or "aggravating" circumstances which are exceptional in nature.

33. As Henderson J., pointed out a paragraph 10 of his Judgment in ***R v. Ricketts (Tareek Ricardo)***[2]:

> "*When deciding whether one or more aggravating circumstances are present, the standard of proof is the same as that applied by the jury in reaching their verdict. Before a circumstance can be viewed as aggravating, the Court must be sure of its existence; the evidence must establish that beyond a reasonable doubt.*"

34. Having reviewed the earlier authorities Henderson J., set out the helpful guidelines in ***Ricketts***, which is now known as the "*Ricketts two-stage test*":

[2] dated the 7th February 2017

a. *the first step in a two-stage analysis is to decide whether there are circumstances that are exceptional in nature;*
b. *to be "exceptional", the circumstances must be unusual or uncommon although they need not be unprecedented or very rare;*
c. *the assessment should be holistic, taking all of the circumstances into account;*
d. *the second step is to decide whether, in light of any exceptional circumstances that are found to exist, a minimum term of 30 years would be arbitrary and disproportionate;*
e. *the intent behind the legislation, which here must be the protection of the public, should be kept firmly in mind; and*
f. *in the absence of circumstances that are truly exceptional in nature, the Court has no discretion to depart from the 30-year norm [minimum term].*

35. ***Aggravating Circumstances***

a. Section 2(2)(a): ***Conditional Release of Prisoners Regulations***: "*A significant degree of planning or premeditation*"

i. The Defendant ensured that he was assigned to farm duties on the particular day and that at the time he would have had the opportunity to be away from prison guards.

ii. He also ensured that he had gloves with him and that he had the necessary weapons with him.

iii. He hid the car in a location in which he thought it would not be found.

iv. The location of the murder in the remote bushes of East End, the container to conceal the body for a significant period of time and the location to hide the car, which would enable the Defendant to coordinate the timing in such a way that he was able to commit the

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murder and return to the prison farm before his absence would be detected, all required a significant amount of planning and pre-meditation.

b. Section 2(2)(c): ***Conditional Release of Prisoners Regulations***: "*Mental or physical suffering inflicted on the victim before death:*

i. The Judge at paragraph 13 of the Verdict Judgment stated:

> "*None of the above facts have been challenged by the Defence and on the basis of Dr. Shuman's evidence it is quite clear that the deceased was brutally murdered.*"

ii. According to the evidence of the post mortem, the Deceased had 5 chop wounds, one on her scalp and the skull, two in her right hand, one in her left forearm, and one on her left wrist and hand. There were 8 incised wounds, three in the scalp, two in the face, one on the right shoulder, two on the left shoulder. There were also two wounds comprised of multiple wounds. One had an intersecting chop – an incised wound on the left side of her scalp – and then there was the large complex wound on the mid-upper back, which was comprised of at least four injuries.

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iii. Dr. Shuman was in no doubt that the cause of death was multiple, sharp force and chop injuries which would have caused a severe loss of blood. Dr. Shuman said the wounds to her scalp and to her left arm would have bled profusely and the deceased would have died within minutes.

iv. The Deceased had received chop wounds and incised wounds to the head which would cause her to lose consciousness. There were incised and chop wounds on the head, scalp, face and the back of the head, which could properly be described as multiple chop and incised wounds. There would have been a serious loss of blood from these injuries and the Deceased would have died in a matter of minutes, and certainly in less than one hour. Dr. Shuman said that one single such laceration to the scalp could be fatal. There were incised wounds to the left shoulder and there were four multiple wounds, one of 19 centimeters, which were inflicted on the mid-upper back and went through the skeleton muscle to the vertebrae, the Deceased would have been struck from behind.

v. There were also a number of defensive injuries. The Deceased's thumb was nearly amputated, the index finger of the right hand was amputated through the middle bone. There was a chop wound on the left side of the Deceased's forearm and to the left wrist and hand of 7.5 centimeters that went through the bones and almost amputated the left hand.

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vi. This was clearly a terrifying mental ordeal as well as horrific physical suffering. It is submitted that this is an aggravating circumstance, which is exceptional in nature

c. Section 2(2)(g): ***Conditional Release of Prisoners Regulations***: "*Concealment, destruction or dismemberment of the body*"

i. The body was not found for some time after the murder. The murder occurred on 11th March. The body was found on 17th March.

ii. The body was found by a container from which there was a foul smell.

iii. The Judge noted that the car, which was located along a dirt track, and the keys and glove, may never have been found, were it not for a passerby noticing a fire in the area.

iv. It was the discovery of the car, which lead to the discovery of the body.

v. The Learned Judge found that the Honda Torneo was moved from the body site and hidden 551 feet up a dirt track. The car was deliberately hidden.

vi. The glove was hidden by someone who never wanted it to be found and identified. If Mr. Frederick had not noticed the smoke coming from a fire near Bottom Road it was quite conceivable that the white Torneo, the keys and the glove would never have been found.

36. ***Extenuating Circumstances***

a. I can find no extenuating circumstances in this case.

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37. ***Previous Convictions***

a. Section 3(1) of Schedule 12 of the ***Conditional Release of Prisoners Regulations*** states:

> *"3. (1) In considering the seriousness of an offence committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating circumstance if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to –*
>
> *(a) the nature of the offence to which the conviction relates and its relevance to the current offence; and*
>
> *(b) the time that has elapsed since the conviction."*

b. The Defendant was previously convicted of a number of offences, for which he received terms of imprisonment. The court may consider that offences of this nature are to be considered as an aggravating circumstance to murder. The conviction record is located at tab 6 of the Case Records Bundle.

i. The Defendant was convicted of wounding and sentenced to six months imprisonment in 1995.

ii. The defendant was sentenced to four years' imprisonment for robbery in 1996;

iii. In the same year he received a two-year concurrent sentence for another robbery.

iv. The defendant was convicted of aggravated burglary in 2005 and was sentenced to 2.5 years imprisonment concurrent to two sentences of 2.5 years (concurrent) for two further burglaries.

v. He was released from custody on 23rd May 2006.

vi. On 1st June 2007 the defendant was sentenced to seven years' imprisonment for aggravated burglary; and

vii. On the 1st June 2007 he was also sentenced to three years' concurrent for possession of an unlicensed firearm.

viii. These (immediately foregoing) offences were committed on 2nd October 2006.

ix. The Defendant was serving his sentence for these offences at the time he murdered Sabrina Schirn.

c. It is submitted that these previous convictions are to be treated as an aggravating circumstance.

CONCLUSION

38. I find that there was a *significant degree of planning and pre-meditation* on the part of the Prisoner:

a. He had marked two dates off on his calendar in his prison cell – namely the 11th March and the 18th March 2009 – and then he discovered that he wasn't going to be able to get to the prison farm on the 18th March 2009;

b. The Prisoner had acquired Sabrina Schirn's telephone numbers in early 2009;

c. The two telephone messages heard by the witness Danielle Ramoon asked Sabrina Schirn to "link up" with the Prisoner;

d. The second telephone message was more urgent and persistent – asking Sabrina Schirn to come to the prison farm and to take the Prisoner to East End;

e. There was/were a significant number of calls from the Prisoner to Sabrina Schirn on the days preceding the 11th March;

f. The Prisoner asked for Andy Myles' gloves in early March – saying he needed them and then saying he needed at least one, and then the Prisoner took Andy Myles' gloves on the morning of the 10th March or on the 11th March 2009;

g. Officer Duhaney at the prison farm noticed the prisoner behaving very suspiciously on the farm and noted that he was working with a machete. As a result of the Prisoner's suspicious behaviour and his disappearance, Officer Duhaney, closed the prison farm;

h. The Prisoner made a very determined effort to conceal the blue glove which had blood and DNA of the deceased in it and the DNA of the Prisoner inside the right index tip.

39. All these factors show a very significant degree of pre-planning and pre-meditation and this is especially so as the Prisoner was inmate of HMPS Northward at the time.

40. I find that the victim endured *significant mental and physical suffering* which was inflicted upon her before her death.

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a. There can be no doubt that she received five chop wounds – one to the scalp and the scull, two to her right hand, one to her left forearm, one on her left wrist and hand. There were eight incised wounds – three in the scalp, two in the face, one on the right shoulder, two on the left shoulder.

b. The pathologist, Dr. Shuman said there were at least four defensive injuries. The deceased's thumb was nearly amputated. The index finger of her right hand was amputated through the middle bone. There was a chop wound on the left side of the deceased's forearm and to the left wrist and hand of 7.5 centimetres that went through the bone and almost amputated the left hand.

c. I accept the DPP's submission that this was clearly a terrifying mental ordeal – as well as the victim enduring horrific physical suffering.

d. I find this to be an aggravating circumstance which is exceptional in nature.

41. I also find that the *concealment of the deceased's body* is an aggravating factor which delayed the identification of the body for several days.

42. When I consider the *previous convictions*: I note that the Prisoner has twenty-nine (29) previous convictions. They are for Carrying an Offensive Weapon, Wounding, Assault, Robbery, Damage to Property, Aggravated Burglary, Possession of an unlicensed firearm (ammunition) and some four or five charges of Burglary. I find that these are all relevant to the offence and to the Prisoner.

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43. I find that the Prisoner inflicted *very intense mental and physical suffering* on the victim before her death which was exceptional in nature. Added to this was a significant degree of planning and pre-meditation, the concealment of the body and the many relevant convictions of offences of a violent nature.

44. When I consider all these aggravating factors together, an increase in the sentence from the 30 years specified in the Law is merited.

45. Therefore, I find that the minimum term of 34 years' imprisonment is appropriate to satisfy the legislative requirements of retribution and deterrence and rehabilitation.

46. The 34 years' imprisonment will start from the date of the defendant's conviction and sentence on the 26th January 2010.

Dated this 7th day of February 2018

Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court